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C/M

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
ANGEL RAMON,

Petitioner,

-against-

ATTORNEY GENERAL OF THE STATE OF N.Y.,

Respondent.
-----x

MEMORANDUM & ORDER

Case No. 03-CV-4353 (FB)

Appearances:

For the Petitioner:

ANGEL RAMON, *pro se*

#99A2446

Greenhaven Correctional Facility

State Road 216

Stormville, New York 12582

For the Respondent:

CHARLES J. HYNES, ESQ.

District Attorney, Kings County

By: ESTHER NOE, ESQ.

Assistant District Attorney

Renaissance Plaza

350 Jay Street

Brooklyn, NY 11201

BLOCK, Senior District Judge:

On August 29, 2003, Angel Ramon ("Ramon"), proceeding *pro se*, filed a *habeas* petition on the grounds that (1) his trial counsel was ineffective for failing to adequately advise him of the consequences of rejecting a plea offer of five years to life, (2) his appellate counsel was ineffective for failing to argue this ineffective-assistance-of-trial-counsel claim, (3) the trial judge did not properly instruct the jury on its obligation to consider the evidence separately with respect to each defendant, and (4) his sentence was unconstitutionally excessive. Even though Ramon's ineffective-assistance-of-trial-counsel claim had not been exhausted, the Court held a hearing in regard to this claim and denied it on the merits; the Court rejected the remaining claims based on the state court record.

See Ramon v. Attorney Gen. Of New York, 03-CV-4353 (E.D.N.Y. Apr. 22, 2004). Because a district court may not hold an evidentiary hearing as to a claim where the state prisoner has failed to develop the factual basis of that claim in state court, *see* 28 U.S.C. § 2254(e)(2), the Second Circuit vacated the Court's order and remanded for the Court to either deny the petition without an evidentiary hearing or stay it until Ramon exhausted his remedies in the state courts. *See Ramon v. Attorney Gen. of New York*, 150 Fed. Appx. 65, 67 (2d Cir. Oct. 03, 2005).

Without the benefit of a factual hearing, the Court cannot deny Ramon's ineffective-assistance-of-trial-counsel claim on the merits. Accordingly, the Court will afford Ramon an opportunity to return to state court to exhaust this claim and stay his petition in the interim. Within 30 days from the date of this Memorandum and Order, Ramon should initiate this claim in state court if he wishes to pursue to it, and within 30 days from the final determination of the state court, he should inform the Court that the claim has been exhausted. *See Zarvela v. Artuz*, 254 F.3d 374 (2d Cir. 2001). In the interim, the Court will administratively close Ramon's petition, pending receipt of such notification.

SO ORDERED.

— FB —
FREDERIC BLOCK /
United States Senior District Judge

Brooklyn, New York
February 21, 2006